

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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CONNIE EVERLY,)
) DOCKET NO.: PT-1997-104
Appellant,)
)
-vs-)
)
THE DEPARTMENT OF REVENUE) FINDINGS OF FACT,
OF THE STATE OF MONTANA,) CONCLUSIONS OF LAW,
) ORDER and OPPORTUNITY
Respondent.) FOR JUDICIAL REVIEW

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The above-entitled appeal came on regularly for hearing on the 30th day of September, 1998, in the City of Butte, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

The taxpayer, represented by Connie and Robert Everly, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by appraiser Joe Rask, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds

and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Improvements only located on Tract 14-B,
McGuinness Addition, Butte-Silver Bow County,
Montana.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$10,153 for the land and \$203,050 for the improvements. Following a DOR review requested by the taxpayer after filing a DOR form AB-26, the DOR increased the improvement value to \$210,650. A revised assessment notice was mailed to the taxpayer following the mailing of the response to the AB-26 form.

4. The taxpayer appealed to the Silver Bow County Tax Appeal Board requesting a reduction in value to \$126,857 for the improvements.

5. The County Board denied the appeal based on the timeliness of the taxpayer appeal.

6. The taxpayer then appealed that decision to this Board.

7. The Board received testimony from both parties concerning the issue of timeliness as found by the local board. This Board ruled at the hearing that the appeal was timely filed following the taxpayer receipt of the DOR response to the form AB-26 filed by the taxpayer. The DOR sent the taxpayer a revised assessment notice which started the filing period with the local board. The Board then heard the value issues raised by the taxpayer.

TAXPAYER'S CONTENTIONS

The taxpayer reminded the Board that this property had been appealed in 1993. The value for this property was established through that appeal at \$126,857. Mr. Everly acknowledged that there have been changes since that time but characterized the value change as excessive. He argued that many of the errors that were made during the 1993 appraisal process were made again in the 1997 reappraisal and that many of the Board's findings were ignored.

Mr. Everly directed the Board to what he believes is an inappropriate quality grade distinction made by the DOR. (Tp ex 1) He pointed out that the foundation of the home is not concrete but is constructed out of treated wood. He also cited the items of carpet, exposed concrete floor in the basement,

asphalt roof shingles, interior finish and construction items, and exterior construction quality. He agreed with the DOR estimate of 75% complete in the basement finish but argued the construction quality grade in that finish.

Mr. Everly stated that in his opinion the garage, pole barn, and improvements are "grossly overvalued at \$38,540." The garage cost \$16,000 to build, the pole barn cost \$2,500, and the concrete and asphalt paving cost \$7,000. Mr. Everly testified that the square footage used by the DOR in its appraisal is 2,048 square feet when, in fact, the foundation is constructed as 2,031.5 square feet. (Tp ex 1)

Mr. Everly told the Board that the current quality grade on the property is the grade that was determined following the taxpayer appeal in the prior cycle. The grade was reduced from grade 7 to the current grade 6+. The value that is being requested is the same value that was determined for the prior cycle as a result of that appeal.

DOR CONTENTIONS

Mr. Rask, representing the DOR, presented a copy of the completed form AB-26 (Ex A), a copy of the appraisal information for the home (Ex B), and a copy of the comparable property selection from the market approach to value (Ex C).

He stated that, following the AB-26 review of the property, corrections were made to the brick veneer, the amount of

asphalt, and the home was remeasured using exterior measurements to correct the square footage of the home.

The home is quality graded as a 6+ with the Condition, Desirability, and Utility (CDU) rated as very good (VG). Mr. Rask pointed out that the sales comparables selected for this property are all of the same grade or slightly lower with similar CDU determination. This home sits on a larger parcel of land that has non-qualifying agricultural classification.

The property has been valued using both the cost approach and the market approach to value. When asked if any of the comparable properties that are shown on the comparable selection sheet have wood foundations, Mr. Rask was unable to immediately determine if they did or did not have. He stated that the sales as presented were the properties that, because of their characteristics, required the least amount of adjustment in relation to the subject.

Comparable numbers one and four are sales of the same property. That property sold in 1993 for \$143,715 and again in 1995 for \$165,000. Mr. Rask testified that this is a reflection of a growth in the neighborhood as well as the growth in the real estate market in general between the prior appraisal cycle and the 1997 reappraisal cycle. It is noted that sale number four indicates the property has a full

finished basement, which it did not have at the time of the sale, and as sale number one it does not indicate that characteristic. The property does not have the full finished basement and the DOR has recognized the error, although it is not possible to correct the data on the sales history file. The sales, however, are considered as arm's-length valid sales by the DOR.

The barn that is on the property has been valued as a shed by the DOR. Mr. Rask stated the grade determination of the barn or other buildings is not made based on the quality grade of the home. The outbuildings stand on their own for that part of the valuation process.

The DOR presented a comparison of the subject to the comparables based on a value per square foot of living area.(Ex C) The comparison is made between the total DOR appraised value for the subject property and the actual sales prices of the comparable property used to value the subject. Mr. Rask testified that the results of the comparison give further support to the DOR value.

BOARD'S DISCUSSION

The DOR has presented indications of value based on the cost approach to value of \$263,670 and the market approach to value of \$219,900 which was adopted by the DOR as the fair market value for this home. The taxpayer is requesting a

return to the value determined by this Board following a tax appeal pursued in the prior appraisal cycle. The values determined by the DOR in that prior appraisal cycle were the result of cost and sales data based on values in 1992. The testimony of both parties is that there has been an increase in growth and in the market for properties in the area of the subject which is not supportive of a return to the prior value.

The taxpayer argued that the property was valued based on a quality grade that is overstated and believed that the home more properly met the description of a grade 5 structure. That argument was made in the prior appeal as well, and this Board agreed that as originally appraised at quality grade 7 it was in error, and the quality grade was reduced to the current 6+ by this Board. The DOR continued that provision from that decision into the current appraisal cycle. The taxpayer failed to present any evidence or testimony that would substantiate a further grade reduction. There is nothing in the record to support the taxpayer claim that construction of the foundation out of treated and engineered wood materials has a direct impact on the market value of the home.

The comparison of the subject property to the sales comparables selected in the market approach on a value per square foot of living area (ex C) that was done by the DOR contains the value for the outbuildings present here as well as

just the house and garage. None of the comparables are shown as having as much value attributed to such outbuildings as does the subject. When the total value is included as is shown on exhibit C, the figure is \$107.37 per square foot of living area; however, when the cost value of the outbuildings is subtracted from the total, that figure drops to \$88.55 per square foot for the house. It is difficult to determine if the presence of the additional buildings would have that much impact when arriving at the value from a market approach. It is arguable that, if the entire property and not just the improvements were considered, the market would indeed recognize the presence of the additional improvements. The exhibit demonstrates, however, that the value on the subject property is not out of line with the sales of comparable property.

The taxpayer did raise several items that go to the CDU determination and not to the construction quality grade.

Based on that evidence and testimony, it is the opinion of this Board that the CDU should be reduced from the current determination of Very Good (VG) to that of Good (GD) to allow for recognition of those items. This appeal is, therefore, granted in part and denied in part and the DOR shall revalue the subject property utilizing the CDU determination of Good.

CONCLUSIONS OF LAW

1. **15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100%

of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

2. It is true, as a general rule,
that the
appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3,(1967)).

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Silver Bow County by the assessor of that county at the 1997 tax year value for the improvements as determined by the Department of Revenue after applying the reduction in the rating for Condition, Desirability, and Utility provision of this order .

Dated this 30th day of December, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

PATRICK E. McKELVEY, Chairman

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.